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I N D E X

OPENING STATEMENTS

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PLAINTIFFS' WITNESSES

JESSICA DEBOI	
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1 (The following proceedings were held in open court
2 on December 12, 2005:)

3 (Voir dire conducted and jury selected and sworn.)

4 (Initial instructions given by The Court.)

5 THE COURT: You ready, Mr. Stilley?

6 MR. STILLEY: Yes, Your Honor.

7 THE COURT: Go right ahead.

8 MR. STILLEY: May it please The Court, counsel,
9 ladies and gentlemen of the jury. I'm here today as counsel
10 for these five young ladies to present their case. And as
11 the judge told you, the purpose of opening argument is to
12 give you an outline, give you some kind of a preview so you
13 will have a basis, a better basis of understanding what's to
14 be presented.

15 Now, I really haven't done a formal introduction of
16 myself, and I think I should do that right now. My name is
17 Oscar Stilley. I'm an attorney from Fort Smith, Arkansas.
18 I've practiced for about 13 years now I guess, 13 or 14
19 years. This is not the typical kind of case I do. This is
20 not my bread and butter. I do practice regularly in federal
21 courts and I am admitted into a number of federal courts.
22 And I also practice on individual cases in other districts or
23 circuits of which I'm not admitted. Most of what I do,
24 however, is not this kind of case. It has to do with federal
25 criminal defense or litigation regarding tax matters.

1 This is a matter that was brought to my attention
2 about four years ago, and I have done investigation and come
3 to the conclusion that it was necessary to bring this lawsuit
4 to get redress for individuals in this type of circumstance.

5 Now, you heard the defense counsel say a number of
6 things about churches. And let me say this. I don't want
7 anybody to think that I am opposed to religion by any means.
8 My mother was raised to the age of 14 as an Amish person.
9 When I go visit relatives on her side of the family, I go and
10 visit Amish people. We're friends. We get along. She moved
11 on to a Pentecostal type church. Personally for many years I
12 have been, well, the same as these defendants will tell you
13 that they are, that is conservative Baptist, go to a
14 conservative Baptist church. And it is with a heavy heart
15 that I have to be standing here before you today presenting a
16 case against people under these circumstances.

17 However, I also want to let you know that my wife
18 and I are very concerned about the --

19 MR. SCHWARTZ: Your Honor, objection.

20 THE COURT: Mr. Stilley.

21 MR. STILLEY: Yes, Your Honor.

22 THE COURT: I just told the jury that an opening
23 statement is an outline of what you intend to show as
24 evidence in your case. It's not about your qualifications,
25 where you go to church, what you think about the case. You

1 know, that's why we got this jury here, to see what they
2 think about the case. So forget all this stuff about what
3 you and your wife think. An outline of what you expect to
4 show, that's what an opening statement is. It's not about --
5 and it's not opening argument, it is opening statement. Now,
6 you get to argue when the case is over. That's why it's
7 called closing argument. This is not argument here, this is
8 just an outline of what you expect to show.

9 MR. STILLEY: Certainly, Your Honor. Thank you,
10 Judge.

11 Ladies and gentlemen, what I think that the evidence
12 is going to show in this case is that these girls were sent
13 to Mountain Park Boarding Academy. And they run the gambit.
14 You heard during the voir dire, you heard the defense counsel
15 say this is for troubled teens. Well, ladies and gentlemen,
16 I'm going to be honest with you, I want to present the truth
17 of the matter. And there are some of these people, for
18 example, Ms. Lueken, we're not going to try to mislead you.
19 She had serious issues. And she needed some discipline and
20 some assistance with her behavior. It's beyond doubt. Her
21 parents were doing the very best that they could for her.
22 They felt like Mountain Park would provide the support and
23 loving atmosphere and consistent discipline necessary to help
24 her conform her behavior to the standards acceptable by
25 society.

1 However, that is not true, for example, of Jessica
2 Deboi. She was sent there to keep her sister company. There
3 was no hint that she -- I mean, she had done nothing that a
4 normal teen would not do. She was simply sent there by her
5 parents at the instigation of the defendants to keep her
6 sister company, and she suffered severe negligent treatment.
7 Our evidence is going to show you she suffered negligent
8 treatment.

9 Now, let me tell you what the core of this case
10 comes down to. The core of this case comes down to the fact
11 that many, many years the boarding academy or facility that
12 would be run by these individuals sitting back here would
13 treat the students in their care so harshly that they would
14 cease their periods, their menstrual periods. And this had
15 ceased for six, nine, 12 months. The defense's argument,
16 their claim is that it's stress. These girls are just so
17 stressed that they missed their periods. Now, the plaintiff
18 is not conceding that. But the evidence is going to show
19 that these girls, which would be in the general rule at the
20 facility, ceased their menstrual periods.

21 And they went and talked to the superiors there
22 about their medical difficulties, and they were just mocked.
23 They were made fun of, discredited. They got no assistance.
24 They didn't get medical care. They didn't get the treatment
25 that is normal and natural and has to be or should be done in

1 a case where a young female, young healthy female has ceased
2 her menstrual periods.

3 There were also -- you will also hear other
4 instances of the students asking for medication and being
5 denied that medication, asking to go to a doctor and being
6 denied an opportunity to go to a doctor, asking to go a
7 dentist, begging and saying I'm in terrible pain, and be
8 told, no, you can't go.

9 And it's not that they didn't have the money.
10 They -- these individuals, they had \$500 in an account to
11 keep for the medical needs of these students. They left that
12 money in the account. And as a matter of fact in Shari
13 Lueken's case, Shari Lueken needed some medical care. The
14 defendants forced her mother, Marilyn Lueken, to send
15 additional money when she was finally to get the medical care
16 that she needed. And they used that extra money and never
17 used the \$500 for the purpose that it was set up for and
18 never gave it back.

19 Ladies and gentlemen, I don't want to belabor this
20 thing. I don't want to go over a lot of things. They will
21 come out on the witness stand. But that is the thrust of
22 what's going on here.

23 And let me say this too, this is not a situation
24 where these students could go get it themselves. These
25 defendants here will admit that the students depended

1 absolutely totally on the defendants for everything they got.
2 When they first get there they have an orientation guide and
3 they have to stay within arm's length of the orientation
4 guide. They can't do anything without permission of that
5 orientation guide. They can't call the doctor. They are
6 very, very limited. They can get, I think, ten minutes twice
7 a month if I'm correct on that, ten minutes twice a month
8 they could call their parents. But they did not have any
9 other communication with the outside world or the ability to
10 get the things that you and I take for granted, things like
11 Tylenol, Sudafed, things like that. They didn't have the
12 opportunity to get those medications.

13 And there's also -- you're also told about counts of
14 battery. Tracey Ozuna was picked out from the students, told
15 we're going to give you a paddling. She was never told what
16 the paddling was for. She was told if she resisted, she
17 would get more swats. She got eight swats. She couldn't
18 even ask. And she may have asked, but they wouldn't tell her
19 what it was for. They didn't tell her what was wrong. They
20 said you're going to get paddling, you're going to get eight
21 licks. And these are hard licks, hauling off as hard as they
22 can and hitting this girl in the bottom. And it hurt really,
23 really bad. And it's bad enough to be paddled when you've
24 done something wrong, but she hadn't done anything wrong, and
25 they didn't even have anything to say to her that she had

1 done wrong, they just beat her. And it was so severe that it
2 was a long time before she could sit down with any degree of
3 comfort.

4 So -- and ladies and gentlemen, there's a number of
5 other things that will come out from the testimony, but as
6 The Court said, this is not argument. This is for the
7 purpose of giving you some idea about where we're going to
8 go. So with that I would conclude my opening statement.
9 Thanks very much.

10 THE COURT: Mr. Schwartz.

11 MR. SCHWARTZ: Thank you, Your Honor. May it please
12 The Court, counsel. Ladies and gentlemen of the jury, I
13 first want to thank you in advance for your service. You're
14 doing your civic duty. And the jury system is the best
15 system in the world. We're one of the few countries that are
16 lucky enough to have that system, and I want to thank you in
17 advance for your time.

18 Now, as I told you earlier, I represent Brother Bob
19 Wills and his wife Betty Wills who are sitting over here.
20 Brother Wills is an ordained minister. And he and his wife
21 Betty founded Mountain Park in 1987. They had -- they have a
22 daughter Debbie who is sitting second from the right who
23 married Sam who is sitting next to her, Sam Gerhardt. And
24 Debbie and Sam Gerhardt came into the ministry in 1993 to
25 help run the boarding school and the ministry.

1 This is a family ministry. These people have
2 brought their families into this ministry. Debbie and Sam
3 have two children, one is Bo Gerhardt, he's not here, he's
4 not being sued. But he's married to Julie Gerhardt. Julie
5 Gerhardt, who is sitting over here in the middle. She was
6 enrolled as a student at the school and she graduated from
7 the school, and then she came back to work at the school for
8 awhile and she met Bo and they got married and now they have
9 two small children. So there is four generations of family
10 that was running this ministry.

11 The Wills, as I said, they founded this ministry in
12 1987. They ran it themselves. Mrs. Wills used to cook all
13 the food herself. They lived in the same building, in a
14 separate apartment, but in the same building as the girls'
15 dorm, the same place where the church was and the cafeteria,
16 the dining hall.

17 And so they -- this to them was a 24-hour job. They
18 lived where they worked because they were very devoted to
19 this ministry. As I mentioned, Brother Sam and Debbie, and
20 Sam is also an ordained minister, joined in 1993. They also
21 lived on the premises. And then when their son was 15, he
22 came to the school. He wanted to live in the boy's dorm so
23 he helped with the ministry. So he lived there from the age
24 of 15.

25 Now, the Gerhardts took a pastoral interest in the

1 children who were at the Baptist -- at the boarding school.
2 Their mission was to turn the lives around of these troubled
3 teens. And what Mr. Stilley says is partially correct, that
4 some of these ladies who are suing now, some of them had
5 problems more than others. But as a general rule the reasons
6 why these teens were taken to the school was because their
7 parents felt like they needed help to raise them.

8 And they had some -- they were having problems.
9 There were four components to the ministry. The first was
10 structure. One of the things that they would do was these
11 teenagers would potentially come from homes where there was
12 not much structure. They may not have been told when to go
13 to bed, when to get up, that they had to go to school, that
14 they had to do chores. So one of the things the ministry
15 offered to the teens was structure in their lives. They were
16 told when to go to bed, they were told when to get up, they
17 were told to clean their rooms, they were required to do
18 chores. It was made sure that they followed proper hygiene.
19 They were required to go to school.

20 The second thing, the ministry was adding worth to
21 their lives. Many of these teens came from backgrounds where
22 they just felt worthless. They felt like they had no future
23 and there was no worth to their lives. So one of the
24 purposes of the ministry was to convince them that their
25 lives mattered. That they mattered to God, they mattered to

1 their parents, and they mattered to the Gerhardts and Wills.
2 They were very involved in these teens' lives and they were
3 concerned about them.

4 Next thing they gave was spiritual order to their
5 lives. The scriptures and the religion and the spirituality
6 was a very, very big part of this ministry.

7 And lastly they gave to them a future, a vision of
8 the future, so that they could see that they have a future.
9 They could think about going to college. They could think
10 about having a career. And you'll see that some of the teens
11 that are suing are very successful. Some of them have gone
12 to college and some are doing very well.

13 Now, when a child was first brought to Mountain
14 Park, it was a shock to their system. They may have been
15 used to eating junk food or fast food. They were put on a
16 well balanced diet. They may have initially felt abandoned
17 by their parents. That would be a common feeling of a
18 teenage who was brought there. And they came from all over
19 the country to go to this boarding school. So they could
20 have come from the West Coast or wherever and brought there
21 and left there by their parents under the care of the
22 Gerhardts and the Wills. And so that may have made them feel
23 abandoned initially.

24 But when they got structure in their lives and they
25 were required to go to school and they were required to get

1 up at a certain time and go to bed at a certain time and
2 required to do their chores, and they had free time, they had
3 movie night, they had sports, they had an outdoor swimming
4 pool, things started to change for them. But initially they
5 could be unhappy and initially until they learned the
6 routine, it could be an upset to their system.

7 And that's why you'll hear some of these girls
8 missed their periods initially when they first got there.
9 This was not unusual, it was not harmful, it was not cause
10 for immediate concern. If they complained about it after
11 several months and they wanted to go to the doctor, they
12 would be taken to the doctor, or if their parents wanted them
13 to go to the doctor, they would be taken to the doctor.
14 Usually, however, this problem went away and their periods
15 returned. They did provide pregnancy tests for anybody who
16 was missing their period and thought maybe they were
17 pregnant, they could get a home pregnancy test. So this was
18 not a cause for concern.

19 They had a doctor available nearby, we talked about
20 him earlier, Dr. Gayle, and you'll hear from him. And if
21 someone was sick, someone broke their leg or hurt themselves
22 or needed a doctor's attention, they could call Dr. Gayle and
23 he was very, very -- they were able to get ahold of him at
24 night or whenever they needed him. He was very good to the
25 school and he tried to get the students in right away. And

1 you'll hear that two of the five students that are suing,
2 they went to see Dr. Gayle. And, in fact, Jessica Deboi --
3 if I'm pronouncing it properly -- she went to see, she was
4 only at the school for less than a year, about eight months.
5 She went to see him twice in that time. And one time was for
6 a gynecological exam. And you'll hear from Mr. Gayle she
7 never complained about missing her periods.

8 Shari Lueken, one of the other plaintiffs, saw
9 Dr. Gayle three times during the time that she was at
10 Mountain Park, once because she had flu and cold symptoms and
11 he prescribed medication for that and another time because
12 she cut her finger and she needed some stitches. And then
13 she had to go back and get the stitches taken out.

14 So when someone was hurt or someone had a complaint
15 that they needed to see a doctor, they would be taken to the
16 doctor.

17 Now, just like if you have your own children, you
18 wouldn't necessarily run to the doctor on the initial first
19 complaint, you have to see how things are going. If someone
20 has a headache, you don't run to the doctor. If someone has
21 a cold, you don't run to the doctor. So the staff at
22 Mountain Park had what they called medicine call. Three or
23 four times a day they would have anybody who had a complaint
24 could line up, come and see the staff and say whatever their
25 problem is, I missed my period, or I'm having my period and I

1 want some Midol or something for cramps. And some of these
2 girls did get that. And they could give over-the-counter
3 things. For constipation, they had laxatives. Sudafed for a
4 cold. Tylenol for headache or fever. If someone had a
5 fever, they'd have them lay down. So they treated these
6 students not unlike someone might treat their own children.

7 And if it was something that needed medical
8 attention and they assessed that, they would take the
9 students to the doctor.

10 They also had a dentist and orthodontist that they
11 could call upon. And, in fact, Erika Teasley had a
12 toothache. Turned out she had a cavity. She was taken to
13 the dentist. She doesn't think she was taken as quickly as
14 she should have been. That will be for you to decide. But
15 according to the staff at Mountain Park, she complained about
16 a headache initially, then she complained about a toothache.
17 It may have been the same thing, but she didn't realize. And
18 ultimately when they realized she had a toothache, they made
19 an appointment, couldn't get in right away, and they got her
20 to the dentist and he filled her cavity.

21 Now, you heard about Tracey Ozuna says that she was
22 swatted. And as I explained before, the school did have a
23 policy regarding discipline. They did not swat and they
24 would not swat her if she did nothing wrong. The policy,
25 which was a very strict policy and was administered only by

1 the -- for the girls, Betty Wills. Was that initially if a
2 girl misbehaved or didn't follow the rules or whatever the
3 problem was, they would talk to her. And you'll hear about
4 that. If that didn't work, the next step was to take away
5 some privilege, dessert or seconds or movie night or maybe
6 they would have them write lines. If that didn't work and
7 all else failed, in rare instances, and there was only a very
8 small percentage of the students that were ever swatted,
9 they'd be swatted. They'd never swat more than five times.
10 And the swatting was not intended to cause unusual pain. It
11 was to discipline the children just like anyone might
12 discipline their own children.

13 The parents were told about it in advance and knew
14 about that this could happen to their children. But I'll
15 tell you that the testimony is going to be that Tracey Ozuna
16 was not swatted. The testimony is going to be that for her
17 to have been swatted, it would have to have been done by
18 Betty Wills, and she will say it wasn't done by Betty Wills.
19 It was not approved by any of these defendants, and they have
20 absolutely no record of this happening. And there would have
21 been a record made, that was the absolute rule.

22 The other thing they're going to find out is that
23 Tracey Ozuna was at the school twice. She was there starting
24 in December of 1995 until April of '96, and then she went
25 home and she was brought back by her parents in May of '97.

1 She was there until June '97. She said she was swatted the
2 first time she was there and that she went home and told her
3 parents about it. And they brought her back to the school.
4 Not only did they bring her back, but they brought her sister
5 back, Jessica, who is also suing. And after Tracey left the
6 school, she kept in touch with the Gerhardts and the Wills
7 and she wrote them letters. She called them to let them know
8 how she was doing. That will be the testimony.

9 What I want you to listen for when you hear the
10 testimony, the background I gave you about the school and
11 the -- what the purpose of this ministry was and what their
12 thought process was as far as taking care of these kids and
13 being concerned about their lives, when you hear the
14 testimony both from the plaintiffs and the defendants, keep
15 in the back of your mind, and you'll hear from them, they'll
16 explain to you, not just me, but they'll explain to you what
17 their thought process was and how they ran the ministry and
18 how much concern they had for these teenagers.

19 When you listen to the testimony, keep in mind what
20 the purpose of this ministry was and what these people were
21 trying to do when they were living there and working there 24
22 hours a day. Keep in mind and think about the evidence in
23 that context. And when we're done I'm going to ask that you
24 find a verdict in favor of my clients. Thank you.

25 THE COURT: You want to call your first witness,

1 Mr. Stilley?

2 MR. STILLEY: Yes. Jessica Deboi.

3 JESSICA DEBOI,

4 Having been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. STILLEY:

8 Q. Please state your name.

9 A. Jessica Deboi.

10 Q. And how do you spell your last name?

11 A. D-e-b-o-i.

12 Q. Where do you live?

13 A. In Nampa, Idaho.

14 Q. How long have you lived there?

15 A. About seven to eight years.

16 Q. And where did you live before there?

17 A. In Oakhurst, California.

18 Q. And how long did you live there?

19 A. From about the age of seven until the age of 16 when I
20 was sent to Mountain Park.

21 Q. Can you tell the jury about how that you were raised?

22 A. I was raised by a two-parent home. Both my parents
23 were married. Can you elaborate or narrow that question
24 down?

25 Q. That's a good answer to the question. How old are you

1 right now?

2 A. I'm 24.

3 Q. And where do you work?

4 A. I work for the Department of Health and Welfare and
5 Child Protection.

6 Q. And what is your job description?

7 A. I'm a licensed social worker, and I work with troubled
8 youth or difficult youth that have mental health issues,
9 substance abuse issues, and I work with those youth who are
10 in foster care as well as their families towards long-term
11 permanency outcomes.

12 Q. And what is your education?

13 A. I have a bachelor's degree in social work. I am in a
14 master's of social work program currently. And I'm currently
15 licensed for the State of Idaho.

16 Q. Where did you get your bachelor's?

17 A. At Northwest Nazarene University.

18 Q. And when did you get that?

19 A. In the summer of 2003.

20 Q. Now, as part of your work do you do considerable
21 testifying in court?

22 A. Yes, I testify in child protection proceeding cases.

23 Q. About how often do you do that?

24 A. I prepare court reports and am involved in court
25 related hearings probably an average of, over a period of one

1 year at least an average of one time per week.

2 Q. Are you married?

3 A. Yes, I am.

4 Q. Any children?

5 A. No.

6 Q. How long have you been married?

7 A. About four years. My husband and I have been in a
8 committed relationship for about seven years.

9 Q. And do you have any siblings?

10 A. Yes, I do.

11 Q. How many?

12 A. Two sisters and one brother.

13 Q. What are their ages?

14 A. My sister Tracey is 22, and my sister Michele is 27.

15 Q. How did you find out you were going to Mountain Park
16 Boarding Academy?

17 A. My parents informed me that the Wills and the Gerhardts
18 had been --

19 MR. SCHWARTZ: Objection, Your Honor, hearsay.

20 MR. STILLEY: Your Honor, this is not to prove the
21 truth of the matter asserted, this is just to prove, to show
22 how she was sent to Mountain Park.

23 THE COURT: Go ahead. Let's keep that to a minimum.

24 BY MR. STILLEY:

25 Q. You can go ahead and answer.

1 A. My parents had informed me that the Wills and Gerhardts
2 had been advising them to send me to Mountain Park for quite
3 some time.

4 Q. Was there any particular disobedience that precipitated
5 that action?

6 A. After my older sister was sent to Mountain Park and
7 Mountain Park staff began influencing my parents as far as
8 parenting decisions went, things at home did become very
9 intense and was difficult, so I did have some behaviors. Can
10 you repeat that question?

11 Q. Let me ask you another question. Were you having
12 difficulty with your grades at school?

13 A. No, I was not.

14 Q. What kind of grades did you get at that time?

15 A. Honor roll.

16 Q. And did you have a reasonably good relationship with
17 your parents?

18 A. My relationship with my parents was reasonably good up
19 until the point my older sister was sent to Mountain Park and
20 the staff began influencing my parents.

21 Q. Now, how many times did you go to Mountain Park?

22 A. One time.

23 Q. And can you tell us the dates?

24 A. I was sent after Easter in '97 and was released during
25 a visit in the end of December of '97.

1 Q. How did you get to Mountain Park?

2 A. I was transported by some escorts that presented as
3 some type of law enforcement personnel.

4 Q. Okay. And what do you remember about the trip?

5 A. I remember being transported in a vehicle with a male
6 and a female, one by the name of John Kunkel.

7 MR. SCHWARTZ: Your Honor, this is outside the scope
8 of the case. It has nothing to do with Mountain Park.

9 THE COURT: Sustained.

10 MR. STILLEY: Judge, may I approach on that?

11 THE COURT: No.

12 BY MR. STILLEY:

13 Q. Do you remember arriving at Mountain Park?

14 A. No, I do not.

15 Q. How much time -- were you conscious when you arrived?

16 A. No, I was not.

17 Q. How much time was missing from your memory?

18 A. A minimum of 20 hours.

19 Q. What was the first -- what was the last thing that you
20 were conscious of?

21 A. I remember stopping to get something to eat at a fast
22 food restaurant, and the two people escorting me went in to
23 get the food. It was daytime. That's the last thing I
24 remember till I arrived at Mountain Park.

25 Q. Did you consume the food?

1 A. Yes, I did.

2 Q. When did you regain consciousness?

3 A. When I was in the bathroom at Mountain Park and I was
4 being told to strip off my clothing and take a shower and was
5 given some type of lice treatment and worm medication.

6 Q. And what was the approximate time of day when you
7 regained consciousness?

8 A. It was nighttime.

9 Q. Do you know what time of the night?

10 A. It was the middle of the night. Everybody was sleeping
11 in the dorm.

12 Q. Did you have a method of knowing what day it was?

13 A. No, I did not.

14 Q. Is it possible that you woke up the same night that you
15 lost consciousness?

16 MR. SCHWARTZ: I object.

17 THE COURT: We've gone far enough with this.
18 Sustained. Let's move on.

19 BY MR. STILLEY:

20 Q. And who was with you when you regained consciousness?

21 A. Debbie Gerhardt, Kim Watson, and it was at least one
22 other person present, but I don't remember who that was.

23 Q. Did you put up any resistance?

24 A. I was totally out of it. All I could do was what I was
25 told to.

1 Q. And how long did that sensation last?

2 A. It was more intense when I first arrived, but it was on
3 some level I felt that way the entire time that I was at
4 Mountain Park.

5 Q. Before Mountain Park did you have a good memory?

6 A. Yes.

7 Q. Did you -- were you able to perceive things well?

8 A. Yes.

9 Q. After you arrived at Mountain Park were you able to
10 remember things there?

11 A. Can you rephrase that question?

12 Q. Was there any difference in your ability to remember
13 things from -- before Mountain Park as compared to during
14 your time at Mountain Park?

15 MR. SCHWARTZ: Your Honor, I object to the relevance
16 of this. I believe it's --

17 THE COURT: Fine. Relevance, Mr. Stilley?

18 MR. STILLEY: What?

19 THE COURT: Relevance?

20 MR. STILLEY: Your Honor, I want to, I'm just fixin'
21 to move on into her mental state during her time at Mountain
22 Park. And I'm just going over the various elements of that
23 and the various ability to --

24 THE COURT: Fine. Move on then.

25 MR. STILLEY: I'll move quickly.

1 BY MR. STILLEY:

2 Q. Okay. Did you feel alert and -- did you feel alert
3 while you were at Mountain Park?

4 A. No, I did not, I felt like a zombie, and I felt like I
5 was under the influence of some type of drug.

6 MR. SCHWARTZ: Your Honor, I object. This is the
7 area that I think you already excluded.

8 MR. STILLEY: Well, I'm through now. Let me go on
9 to this next one.

10 THE COURT: Sustained. The jury will disregard the
11 last statement of the witness. Go ahead.

12 MR. STILLEY: Your Honor, can I make a little
13 argument on that?

14 THE COURT: No, we've been talking up here all
15 morning. Enough talking.

16 BY MR. STILLEY:

17 Q. Were you allowed to get enough sleep while you were at
18 Mountain Park?

19 A. Was I allowed to go to sleep?

20 Q. Were you allowed to get enough sleep?

21 A. No, I was not.

22 Q. How much sleep did you normally get?

23 A. An average of probably five to seven hours of sleep a
24 night.

25 Q. And before Mountain Park how much sleep did you get?

1 A. An average of at least eight or nine hours of sleep a
2 night.

3 Q. And did the eight or nine hours provide you sufficient
4 rest to function properly?

5 A. Yes, it did.

6 Q. Did you complain to anybody at Mountain Park that you
7 were not being allowed to get enough sleep?

8 A. I don't remember.

9 Q. Did you try to get more sleep?

10 A. It wasn't allowed.

11 Q. How were you prevented from getting more sleep?

12 A. We had a very rigid schedule that required a certain
13 time that we got up every day, and the time we went to bed
14 varied. And when I became an orientation guide, the sleep
15 decreased because I was put on night patrol which interrupted
16 at least an hour and a half to two hours of sleep per night.

17 Q. Did you ever get -- did you ever get a cold or the flu
18 while you were at Mountain Park?

19 A. Yes.

20 Q. Were you allowed to get additional sleep during that
21 period of time?

22 A. No.

23 Q. Did you ask?

24 A. Yes.

25 Q. Who did you ask, do you remember?

1 A. I know I probably asked my orientation guide, but I
2 can't remember specifically who I asked at that time.

3 Q. Now, can you explain to the jury what an orientation
4 guide is and what they do?

5 A. An orientation guide is, it's kind of like a level
6 system in a way. You came in as a new student.

7 MR. SCHWARTZ: I'm sorry, I can't hear her. Could
8 you speak a little louder, please.

9 THE WITNESS: I apologize. I have a cold so my
10 voice is struggling a little bit.

11 MR. SCHWARTZ: Maybe she could use some water.
12 Would water help?

13 THE WITNESS: That would be great.

14 BY MR. STILLEY:

15 Q. Okay. Now, if you don't mind, just remember to try to
16 speak into the microphone so that your voice will carry
17 better and explain to the jury about what an orientation
18 guide is.

19 A. An orientation guide is a position that is a youth who
20 is at the facility can elevate to where they are allowed more
21 privileges. As an orientation guide I was required to be
22 within an arm's distance of a newer student at all times. I
23 could tell that new student when they could go to the
24 bathroom, whether or not they could sleep with a pillow. I
25 basically was there to enforce the policies and regulations

1 that were instilled by the Wills and the Gerhardts in the
2 program.

3 Q. How did you know that it was the Wills and the
4 Gerhardts who told other orientation guides what to do?

5 MR. SCHWARTZ: Your Honor, I object to the hearsay.

6 MR. STILLEY: I'm asking the basis of her knowledge
7 what she just testified to.

8 THE COURT: Sustained.

9 BY MR. STILLEY:

10 Q. So if you asked the orientation guide for more sleep
11 when you were sick and you were denied, what other remedies
12 did you have at Mountain Park?

13 A. None that I can think of.

14 Q. What if you just walked away from your orientation
15 guide and went to talk to the Wills?

16 A. I would be severely punished if I'd done that.

17 Q. You would have been punished if you'd done that?

18 A. Without the orientation guide's approval.

19 Q. And how did you know that?

20 A. My orientation guide, and the regular standard or
21 practice at the facility.

22 Q. Did anybody else tell you that?

23 MR. SCHWARTZ: Object to the hearsay, Your Honor.

24 THE COURT: Sustained.

25 MR. STILLEY: Your Honor, I would make the argument

1 this is not for the truth of the matter asserted, it's for
2 showing the impact upon the hearer that she thought that that
3 was a rule she had to comply with.

4 THE COURT: I understand, but the way you asked the
5 question, did somebody else tell you this. I mean, you're
6 just opening the hearsay -- you need to rephrase that or
7 something. But no, same ruling.

8 BY MR. STILLEY:

9 Q. Was there any doubt in your mind that leaving your
10 orientation guide and going to somebody else to ask for help
11 would result in severe punishment?

12 A. I have no doubt that I would have been punished if I
13 had done that.

14 Q. Do you know what kind of punishments were available at
15 Mountain Park?

16 MR. SCHWARTZ: Your Honor, it lacks foundation. He
17 hasn't laid a foundation as to the basis of her knowledge.

18 THE COURT: Go ahead. Overruled.

19 A. Can you repeat the question?

20 THE COURT: Levels of punishment.

21 A. What were the punishment?

22 Q. Yes.

23 A. I could be put on what was called silence, which I was
24 not allowed to speak to anybody at all. On orientation we
25 could only speak to people designated as persons that staff

1 allowed us to speak to. I could be given the swats, which
2 would be somebody -- some of the students or staff holding
3 that particular person down and repeatedly hitting them with
4 some type of paddle. I could be -- one time I had to watch
5 one of my new students take a shower as one of her
6 punishments. So there was public humiliation with that.
7 There was severe public humiliation regularly practiced.
8 Sorry.

9 Q. Let me ask you, let me help you out here. Let me ask
10 you about the shower. Do you know what the temperature of
11 the water would be for that shower?

12 A. I'm not sure.

13 MR. SCHWARTZ: Your Honor, I object. This is
14 irrelevant. It's not part of the lawsuit.

15 MR. STILLEY: I'm just trying to establish what kind
16 of punishment it is.

17 THE COURT: You established what kind of punishment.
18 Now, did she receive some of this? Let's get on with it. I
19 gave you the opportunity to paint this broad picture, now
20 let's jump on in this picture and see what happens with this
21 witness.

22 MR. STILLEY: Can I --

23 THE COURT: No. How do you -- please. Are you
24 talking about a shower she had or are you just talking in
25 general?

1 MR. STILLEY: I'm talking about the threat of the
2 punishment to her.

3 THE COURT: Please. No. Sustained. How is she
4 going to know the temperature of every time somebody was in
5 the shower? Please. She wasn't there with a thermometer.
6 Sustained. Move on.

7 MR. STILLEY: Your Honor, what I'm trying to do --

8 THE COURT: I know what you're trying to do, but
9 you're not doing it right. So please. He's objected. He's
10 got you, so that's that. He got you -- he's got a hold on
11 you. You got to break the hold. You got to figure out
12 another question or something. But that one isn't flying.
13 Sustained.

14 MR. STILLEY: Am I prohibited from going anywhere
15 around that question?

16 THE COURT: Listen, I let you go with the general
17 idea of the types of punishment. Now it would seem that you
18 would talk to this witness about the punishment that she got,
19 that she can tell us about personally, okay. Because that's
20 what it's about. She is a plaintiff in this case, what
21 happened to her.

22 MR. STILLEY: Well, I do believe -- I don't think
23 that The Court has ruled out assault, and assault would
24 include a threat that she would be punished in a certain way.
25 Now, I can ask the question a different way. I don't want to

1 get in trouble for it.

2 THE COURT: I'm sustaining that last one about the
3 temperature of the water of the showers. That's sustained.

4 MR. STILLEY: Okay. And I -- you know, I will --

5 THE COURT: Fine. That's sustained. Move on. I'm
6 not here to argue with you about this.

7 MR. STILLEY: Your Honor, I've got another question
8 that I want to ask that's close to that. Can I approach?

9 THE COURT: No.

10 MR. STILLEY: Okay. Is the ruling that I cannot go
11 to anything related to that or can I just ask --

12 THE COURT: I don't know what you're going to ask.
13 I have no idea what you're going to ask.

14 BY MR. STILLEY:

15 Q. Do you know which one of the -- with respect to the
16 shower, do you know which one of the faucets would be turned
17 on for that shower or if both would be?

18 MR. SCHWARTZ: Same objection. She hasn't testified
19 that she was punished in the shower.

20 MR. STILLEY: Your Honor --

21 MR. SCHWARTZ: There's no claim of that. There's no
22 claim of that.

23 MR. STILLEY: Your Honor, it's a threat. And as far
24 as I can tell, assault is still alive.

25 THE COURT: You know, it would seem that maybe this

1 would have been covered in the first instance when you asked
2 what the punishments were. So was the punishment a cold
3 shower, a hot shower? Please, come on. You want to get to
4 how far was the dial turned. She wasn't there every time.
5 Come on. You're just painting a general picture right now,
6 and I'm giving you the leeway to do it, but you're trying to
7 get too specific about things when she was not there.

8 BY MR. STILLEY:

9 Q. Okay. Can you think of any other punishment that you
10 had been informed that might befall you if you tried to go
11 get some medicines or medical assistance without your
12 orientation guide's permission?

13 MR. SCHWARTZ: Your Honor, I'm going to object to
14 lack of foundation and hearsay. It's not tied to anything
15 alleged that my clients did.

16 THE COURT: You can cross-examine. I'll give him
17 some leeway here. Go ahead.

18 A. Some of the punishment could include some of the public
19 humiliation tactics that I referred to. For example, if I
20 had gone and asked for -- when I went and asked for
21 medication, if I had overstepped my orientation guide's
22 authority, I would be publicly humiliated for that in front
23 of the other girls, which those voices don't -- after eight
24 years they really won't go away.

25 Some of the girls would have to wear binkies around

1 their neck and carry and sit on stools because they are
2 babies. The crying, like I am right now -- I'm sorry, I
3 didn't realize this was going to be so emotional.

4 Q. As you sit here today do you have knowledge of a set of
5 written rules at Mountain Park?

6 A. Yes, I did. Did I have knowledge that there were
7 rules, is that the question?

8 Q. Do you have knowledge as you sit here today of written
9 rules?

10 A. I never saw written rules.

11 Q. Since you've been out of Mountain Park have you seen
12 written rules?

13 A. I observed that there was a Parent/Student Handbook,
14 but I was never given that while I was there.

15 Q. Were you ever told of the existence of a written
16 Parent/Student Handbook while you were at Mountain Park?

17 A. No, I was not.

18 Q. How did you -- how did you come to have knowledge of
19 any rules that you had to obey there?

20 A. I was under the complete control of my orientation
21 guide and the staff. Whatever they said couldn't be
22 questioned, and we had to submit to.

23 Q. Were you ever -- were you ever personally ordered to
24 discipline another student?

25 MR. SCHWARTZ: Your Honor, I object.

1 MR. STILLEY: We're talking about her.

2 MR. SCHWARTZ: Well, this has already been excluded
3 by The Court about other students that aren't defendants in
4 the case. You've already excluded that, students that are
5 not plaintiffs in this case. You've already excluded that.

6 (The following proceedings were held at the bench
7 and outside the hearing of the jury:)

8 THE COURT: It seems that we're talking about
9 emotional distress. Where are we going with this stuff?

10 MR. STILLEY: I'm just trying to show what happened,
11 what went on. I'm just trying to show what happened.

12 THE COURT: I know it's a lot of stuff happening,
13 I'm glad I wasn't there, you know, what you're talking about.
14 But you just can't -- you're like throwing everything out and
15 if anything sticks, that seems to be your approach. I don't
16 know where you're going. You have to have some kind of claim
17 that this is relevant to.

18 MR. STILLEY: My understanding was that the ruling
19 was we could not put on evidence of a traumatic incident that
20 did not involve one of the plaintiffs. And if one of the
21 plaintiffs was involved in having to impose the discipline,
22 then they are involved. That's my understanding what the
23 ruling is. Now, I surely don't want the ruling --

24 THE COURT: She says -- okay, she's going to testify
25 she's instructed to impose discipline. Is it on one of these

1 other plaintiffs?

2 MR. STILLEY: I'm not actually positive what she's
3 going to testify to. Shame on me, Judge. Isn't that
4 terrible. Doesn't that violate the first rule of doing a
5 good job.

6 THE COURT: You figured you don't need to know
7 because whatever she is going to say when she up here and
8 crying and carrying on is bad, whatever it is it's going to
9 work for you.

10 But all I'm saying is we got negligence and we got
11 battery. How does her imposing discipline on another student
12 have anything to do with those things?

13 MR. STILLEY: Let's clear up this first thing before
14 we go on. Do we not have assault? You didn't throw out
15 assault. I think we still have assault.

16 THE COURT: Well, somewhat. I don't think there is
17 a real assault situation. In the state law it's consumed in
18 the battery situation.

19 MR. STILLEY: Well, now, Your Honor, can I brief you
20 on that because that's just not so. I've got case law
21 straight on point. Let's just go ahead with it.

22 THE COURT: It doesn't make any difference. I said
23 it's consumed in there, so your assault is there.

24 MR. STILLEY: She doesn't have a battery, though, to
25 hang it on.

1 MR. SCHWARTZ: First of all, Judge --

2 THE COURT: That's what I'm saying, what's the
3 relevance of this? I don't know what it's relevant to.

4 MR. STILLEY: Well, they are going to say that they
5 don't -- their own contract says they don't allow students to
6 discipline other students. What I'm trying to prove is that
7 they do. And that here -- wait a minute, and that students
8 have to give credence to the possibility that their
9 orientation guide or some other orientation guide is going to
10 dog paddle them and tear them limb from limb. That's why
11 they don't just walk off and get some drugs when they need
12 it. That's why they just don't stay in bed when their nose
13 is blocked up and they are about to fall over, because the
14 alternative is worse. And I have to show that in order to
15 show the elements --

16 THE COURT: Mr. Schwartz.

17 MR. SCHWARTZ: It's pretty farfetched, Judge. He's
18 talking about -- he doesn't know what she's going to say,
19 but, first of all, there's nothing to indicate any of my
20 clients told her to discipline another student. No. 1, he
21 hasn't laid that foundation.

22 No. 2, you've already excluded from evidence in the
23 motion in limine any claims about the things that were done
24 to other students. So that's already been excluded.

25 And, No. 3, this whole thing he's trying to tie it

1 back to why she couldn't go get more aspirin and Sudafed or
2 whatever, and he hasn't established that she needed any. How
3 is it relevant? And it's got -- she said I thought I could
4 be punished. Okay. What does it have to do with what was
5 done to somebody else? What she was told by maybe somebody
6 else, I don't know what she's going to say, but I presume
7 that some other student or some other person or some other
8 defendant told her to discipline. It's way too far remote.

9 THE COURT: And I guess what you're trying to get is
10 an example of the punishment that can be administered.

11 MR. STILLEY: Right.

12 THE COURT: And other students may administer at the
13 behest of who?

14 MR. STILLEY: I think she's already testified that
15 it's Bob Wills and Betty Wills and Debbie and Sam Gerhardt.

16 THE COURT: Well, no. She has just been talking
17 about the orientation guides, what they would do. My
18 impression is since you don't know what she is about to say,
19 the orientation guide had her discipline somebody else. Now,
20 if she's going to say the Gerhardts, you know, or the Wills
21 directed her to administer something to somebody then, you
22 know, maybe.

23 MR. SCHWARTZ: Judge, this hasn't been pled, it
24 hasn't been disclosed, and I don't see how it's negligent.
25 All she has is a negligence claim.

1 THE COURT: You're talking about the general threat
2 of why she was afraid to leave or doing anything is she could
3 be punished?

4 MR. STILLEY: Right.

5 THE COURT: We'll leave it at that. She can answer
6 this question yes or no, and then we're not going into any
7 specifics. Did she answer it already?

8 MR. SCHWARTZ: I don't think so.

9 MR. STILLEY: No, I don't think she's answered that
10 question yet.

11 THE COURT: Whether or not she was instructed to
12 administer punishment. Whatever her answer is then that's
13 the end of it, okay. We're not going into any specifics.

14 MR. STILLEY: The only question I ask is whether or
15 not she was ordered to administer punishment?

16 THE COURT: Yeah.

17 MR. SCHWARTZ: I still have an objection because,
18 again, ordered by who? It's not my client.

19 THE COURT: He has said he doesn't know what she's
20 going to say, so that's the end of it.

21 MR. SCHWARTZ: Things happen at schools between
22 students all the time.

23 THE COURT: I know. I'm stopping right there.
24 That's it. That's all you get, okay.

25 (The following proceedings continued within the

1 hearing of the jury:)

2 BY MR. STILLEY:

3 Q. Was there any doubt in your mind that disobeying an
4 orientation guide's order was likely to bring punishment?

5 A. Was there any doubt in my mind --

6 Q. Correct.

7 A. -- that there would be punishment if I disobeyed my
8 orientation guide?

9 Q. Correct.

10 A. I had no doubt in my mind.

11 Q. Now, you told us about times that you were sick; is
12 that correct?

13 A. Yes.

14 Q. Did you -- and what kind of illnesses did you have?

15 A. Sinus and ear problems like I have right now, flu-like
16 symptoms. I lost my period. I became severely constipated
17 when I got there. I had vaginal irritation. I'm having a
18 hard time thinking of anything else right now currently.

19 Q. Let's talk about the sinus or cold type problem. Did
20 you ask anybody for medication?

21 A. I'm sure I probably asked my orientation guide. Yeah,
22 actually I do remember, I asked my parents during the phone
23 call.

24 Q. Do you remember what you asked for?

25 A. Usually I take Sudafed for my ears for congestion.

1 Q. Do you remember if that's what you asked for?

2 A. I don't remember specifically, it's been a long time.

3 Q. Did you get any medication?

4 A. No, I did not.

5 Q. Do you remember about how many times you asked?

6 A. I can't remember how many times. I know that it was
7 made clear to me that we weren't allowed to have
8 over-the-counter medications while I was at Mountain Park
9 such as Sudafed or some type of cold medication.

10 Q. Did this sinus type illness happen once or did it
11 happen several times?

12 A. It was a chronic problem since I can remember. So
13 periodically, I know it happened a handful of times that I
14 had those symptoms.

15 Q. And do you recall if you asked each time for medicine?

16 A. I don't remember if I asked every time because it was
17 made clear to me at the beginning of my stay there that those
18 medications weren't going to be given to me.

19 Q. Were you -- well, let's ask about the other things,
20 about constipation, did you complain about that?

21 A. Yes, I did.

22 Q. Do you remember who you complained to?

23 A. My orientation guide. I ended up being at one point in
24 time given prunes and prune juice, which was something we had
25 to get permission directly from Betty Wills or Debbie

1 Gerhardt to be able to have.

2 Q. Did you get those each time you asked?

3 A. I didn't -- initially I did not, I was not given
4 anything for constipation.

5 Q. About how long did you have to wait before you got that
6 assistance?

7 A. I don't remember because things were foggy. I felt
8 drugged, so I -- time periods like that are hard for me to
9 remember.

10 Q. Did you ever have that foggy feeling before you were at
11 Mountain Park?

12 A. No, I did not.

13 Q. How about after Mountain Park?

14 A. No, I did not.

15 Q. How long did it take after Mountain Park before you
16 began feeling the way you feel now?

17 A. Probably about a month.

18 Q. You said something about changes in menstrual periods.
19 Can you -- I know this is a little bit embarrassing, but can
20 you explain to the jury what happened to your menstrual
21 periods after you got to Mountain Park?

22 A. My menstrual period stopped for about a period of six
23 months during my stay there. And it came back the last
24 couple months, but it was really light, which was not normal
25 for my periods. I have a very regular menstrual cycle.

1 Q. Have you ever had that problem before Mountain Park?

2 A. No, I had not.

3 Q. Have you ever had that problem after Mountain Park?

4 A. No, I have not.

5 Q. While you were at Mountain Park, how long did it take
6 before you missed your first period?

7 A. I missed my first one.

8 Q. Did you say anything to your orientation guide or to
9 any defendants about this problem?

10 A. Yes. I was informed that it was normal for --

11 MR. SCHWARTZ: Objection, Your Honor, hearsay.

12 MR. STILLEY: Your Honor, it's not to prove the
13 truth of the matter asserted, it's --

14 THE COURT: Well, I don't know what it's for.
15 Sustained.

16 BY MR. STILLEY:

17 Q. About how many times did you bring this to the
18 attention of the defendants?

19 A. I can't remember the number of times, but I do remember
20 Debbie Gerhardt informing us that it was normal for girls to
21 not have periods while they were at Mountain Park.

22 Q. And do you remember the circumstances of this
23 statement?

24 A. I remember that it was -- we were told that it was
25 because of the stress of being at Mountain Park. And my

1 parents were informed the same information.

2 Q. And who was the speaker at that time? Was that Debbie
3 Gerhardt?

4 A. Debbie Gerhardt.

5 Q. Were you ever taken to a doctor for the condition?

6 A. For the loss of my menstrual cycles?

7 Q. Correct.

8 A. Not specifically for that, no.

9 Q. Were you taken for some purpose?

10 A. I was taken to the doctor one time for vaginal
11 irritation that came unexpectedly while I was there, which I
12 had no history of ever having any history of vaginal
13 irritation like that prior to my stay at Mountain Park.

14 Q. Do you recall if you had the occasion to tell the
15 doctor about your missed periods?

16 A. I was not the one to be allowed to communicate with the
17 doctor back and forth that I can remember. I remember he did
18 the exam and left the room. And I wasn't told -- I was told
19 by the staff what the outcome was, not by the actual doctor.

20 Q. Now, who was the doctor?

21 A. I don't remember.

22 Q. How did you get to his office?

23 A. I was driven in one of the staff's cars.

24 Q. Did you go in the front door of the office?

25 A. No, we were taken -- I was taken in the back door.

1 Q. And do you remember who it was that drove you to the
2 office?

3 A. I know Kim Watson and Melissa Edwards were there. And
4 there was at least one other person, but I can't remember who
5 it was.

6 Q. Did you see any sign on the door about what doctors
7 were at that clinic?

8 A. I don't remember. I was -- I don't remember.

9 Q. When you left, did you go out the front door or the
10 back door?

11 A. The back door.

12 Q. Did you ever see the front of the building?

13 A. I don't remember.

14 Q. If you saw the doctor today, do you think you'd be able
15 to recognize him?

16 A. I don't know. I was --

17 Q. Excuse me?

18 A. Like I said, I was pretty -- felt pretty out of it,
19 pretty drugged while I was there.

20 Q. About how long did you see the doctor?

21 A. It was pretty brief.

22 Q. Did you try to talk to the doctor?

23 A. I don't remember.

24 Q. Were you ever made fun of because your periods had
25 ceased?

1 MR. SCHWARTZ: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. STILLEY:

4 Q. What was your general state of health immediately
5 before Mountain Park?

6 A. Prior to Mountain Park I was pretty athletic. I
7 participated regularly in sports through high school. I had
8 some sinus and allergy problems. I did not have any mental
9 health issues. No significant medical issues that I can
10 think of prior to my stay at Mountain Park.

11 Q. And after Mountain Park what -- how do you describe
12 your general state of health, physical health?

13 A. I have panic attacks which puts my fight or flight
14 response specifically --

15 MR. SCHWARTZ: Excuse me, Your Honor, I object.

16 THE COURT: Hold on.

17 MR. STILLEY: Your Honor, I'm just trying to show
18 the state of health before, during, and after Mountain Park.

19 THE COURT: Okay. But I don't know that you need to
20 go into all this detail that you're doing. And you're going
21 into the state of her health after Mountain Park, correct?
22 After? You're going into the state of her health after now?

23 MR. STILLEY: Yes, that's correct.

24 MR. SCHWARTZ: Your Honor, this has already been
25 stricken from the case, it's already been excluded.

1 MR. STILLEY: No, Judge, that's not so. In your
2 opinion you said that --

3 (The following proceedings were held at the bench
4 and outside the hearing of the jury:)

5 THE COURT: Okay. Now you're asking her about what
6 condition?

7 MR. STILLEY: About her -- what I intended to do was
8 ask her about her general physical condition before, during,
9 and after Mountain Park.

10 THE COURT: I'm there. I'm past that. And so
11 you're asking about what specifically? You're asking about
12 some special disease or condition? What are you asking?

13 MR. SCHWARTZ: She started talking about panic
14 attacks. That's what she started to talk about.

15 MR. STILLEY: Well, that's the next place I'm going,
16 what was your mental functioning before Mountain Park, during
17 Mountain Park, and after Mountain Park. You ruled in your
18 order that that was perfectly acceptable. I mean, you said
19 that was something the jury is going to have to decide. You
20 might not think that it's the most strong, but the jury is
21 going to have to decide if that's enough.

22 MR. SCHWARTZ: Judge, the intentional infliction of
23 emotional distress claim was stricken because they don't have
24 a medical doctor. They still don't have a medical doctor.
25 They can't have these ladies testify that they have panic

1 attacks now that results from what happened to them at
2 Mountain Park. They need a doctor to do that. And if you
3 let the witnesses just say it, it's highly prejudicial
4 because it's not anything they can link up medically, which
5 they need to do. Again, he's trying to get into the back
6 door what he can't get in through the front.

7 MR. STILLEY: It's negligence. It's damages caused
8 by these individual's conduct. It's damages. And even if
9 you had a doctor, you'd still put on evidence. I mean, in
10 the Stacy Keller case we put on evidence from the witness
11 about her mental state, her mental functioning before and
12 after. I don't think you can find a case anywhere that says
13 a witness themselves can't testify to that. Other people
14 can't.

15 THE COURT: Generally we got to have somebody
16 connect it up to the negligence or the battery situation.
17 Her only claim, I believe, is a negligence claim. And so
18 what is there to connect this up with negligence other than
19 her saying after she left the school where she had these and
20 maybe she -- I don't know.

21 MR. STILLEY: I can connect it up really good,
22 really good.

23 MR. SCHWARTZ: You know, I have nightmares about
24 when I went to school too. I'm not trying to be funny or
25 belittle it, but the fact is she could be unhappy about being

1 there for reasons unrelated to any negligent act. They need
2 to have a doctor link that up. And just to allow her to
3 testify that I didn't like the place, and I did not want my
4 parents to send me there, and now I have panic attacks about
5 the fact that I got sent there, it's all pure speculation.

6 THE COURT: Okay. You say you're going to link it
7 up. What does she have panic attacks about, Mr. Stilley?

8 MR. STILLEY: Well, most of the things she has is
9 she has recurrent nightmares.

10 THE COURT: About what?

11 MR. STILLEY: About being at Mountain Park and being
12 cornered and being trapped and being raped. This is the
13 injury. This is what she suffered. This is her only day in
14 court, unless we get a remand, but we want to try this once,
15 right? This is her only day in court. This is the only
16 time --

17 THE COURT: This whole rape thing, you've gone kind
18 of far with that.

19 MR. STILLEY: Wait a minute. This individual told
20 me that this was the fact.

21 THE COURT: I'm not saying that is not a fact.

22 MR. STILLEY: She had -- before Mountain Park there
23 was no problem. After Mountain Park there was. There's
24 nobody else to cause the problem. Nobody else. They have --

25 THE COURT: I don't know that --

1 MR. STILLEY: Is there a possibility that she just
2 did it to herself?

3 THE COURT: I don't want to argue with you about
4 this thing. But it's relatively strong in terms of her --
5 now she has panic attacks since she left there. And as about
6 being cornered and raped when there is not evidence of a rape
7 in the case, she's cornered and attacked, damages of being
8 paddled or some other punishment that was threatened of her
9 or --

10 MR. SCHWARTZ: I think this is the Bass versus
11 Nooney problem, this is the very problem that Bass versus
12 Nooney is all about, you can't let somebody just come in and
13 say I have nightmares and I feel bad, I have panic attacks,
14 because it's not a medically diagnosable injury, it doesn't
15 matter if it's negligence or intentional, you still need a
16 medical doctor. And if you let her say it then the cat's
17 already out of the bag. And what are we supposed -- we can't
18 put it back. And he can't prove it. He can't get to the
19 jury on that theory because he doesn't have the medical
20 doctor, so why should he be allowed to put the evidence in?

21 THE COURT: I'm sustaining that.

22 MR. STILLEY: I want to say one more thing. Can I
23 say this? The defense is saying that we don't have medically
24 diagnosable, medically significant injury resulting. We've
25 got that with the missed periods. That's medically

1 diagnosable. That's medically significant. It's not
2 deniable. It's not a bruise. It's not a cut. But there are
3 lots of injuries that are not bruises, that are not cuts.
4 And we need this lady to testify about the injury that
5 happened to her. It's not just missed periods, it's other
6 things. Let's do this thing one time. Let's try this case
7 and --

8 THE COURT: Fine. I heard. But what about that is
9 any different than missing periods the witness has
10 experienced?

11 MR. SCHWARTZ: Well, Judge, I don't think it's -- I
12 don't think there's any negligence, but she can testify I
13 missed my period. I don't think there's any medically
14 diagnosable injury from it, but she said I missed my period.
15 You already ruled that can come in in the summary judgment
16 ruling. But this is part of what you excluded. This is part
17 of the -- what about the ruling that you made that you need a
18 medically diagnosable injury to have an emotional claim, to
19 have an emotional distress claim, that's the difference.

20 THE COURT: Are we saying then that basically any of
21 these claims that any of these plaintiffs talk about that are
22 emotionally distress related, you don't bring any to testify
23 about those?

24 MR. SCHWARTZ: Right.

25 MR. STILLEY: We've already been down this road and

1 you overruled the objection, strident objection of
2 Mr. Oliver -- please, Judge, you said, no, I didn't, you're
3 mistaken. And it's in the record.

4 THE COURT: Well, maybe I got smarter in this case.

5 MR. STILLEY: Well, no, Judge. No, that's not the
6 deal. The deal is that unless she is allowed to testify to
7 the damage that was done to her, people who try to make out
8 I'm the bad guy because the jury figures out there is
9 something else going on. He's a good cross-examiner. He's
10 got an expert they can put on the stand and say what they
11 want.

12 THE COURT: Then we get back into this claim of
13 intentional infliction of emotional distress that is out of
14 this case.

15 MR. SCHWARTZ: Exactly.

16 MR. STILLEY: Well, Judge, we had it on the
17 negligence in Stacy Keller's case and it came in and we lost
18 anyway. Why not just go ahead, let us do that, and based on
19 what they say, we are going to lose anyway.

20 MR. SCHWARTZ: She didn't see a psychiatrist or
21 psychologist. There is no witness anyway. There's not
22 anybody to say, to link it up. It's pure speculation for her
23 to say I have nightmares because what they did to me at
24 Mountain Park. Well, you could have nightmares, my kid could
25 have nightmares because they go to school and don't like

1 their teachers. It doesn't prove negligence. It doesn't
2 prove a --

3 THE COURT: Sustained. We've been over this about
4 no testimony of emotional, psychological nature, okay.

5 MR. SCHWARTZ: Can we ask the jury to disregard?

6 THE COURT: Fine.

7 (The following proceedings continued within the
8 hearing of the jury:)

9 THE COURT: The jury will disregard the last
10 question about the nightmares.

11 BY MR. STILLEY:

12 Q. Now, did you ask to go to a doctor any other time
13 except the time you were taken to the doctor?

14 A. Yes.

15 Q. How many times?

16 A. I don't remember how many times.

17 Q. And what was the result of that?

18 A. That I was not taken.

19 Q. And do you remember who you asked?

20 A. My orientation guide.

21 Q. Did your orientation guide ever give you an opportunity
22 to go to the Wills or the Gerhardts to ask?

23 A. Not that I can remember. I was terrified of being
24 publicly humiliated.

25 Q. Were you -- while you were at Mountain Park were you

1 ever deprived of the privilege of going to the bathroom?

2 A. Yes.

3 Q. About how many times?

4 A. It was probably about daily, the entire time I was on
5 orientation. I could only go when she wanted to go.

6 Q. And how much discomfort did that cause you?

7 A. A lot. I would go hours without being allowed to use
8 the rest room. I had a real weak bladder, so --

9 Q. And did they have exercise that you were forced to do?

10 A. They had exercise available to me.

11 Q. Were you denied adequate exercise?

12 A. Yes.

13 Q. About how often did that happen?

14 A. Maybe had an opportunity to do some pretty mild
15 physical exercise maybe an average of one time a week about.

16 Q. Now, were you allowed to keep a diary or a calendar at
17 Mountain Park?

18 A. No, I was not.

19 Q. How did you find out that you were prohibited from
20 having those things?

21 A. My orientation guide.

22 Q. Did you ever have an opportunity to ask anybody else if
23 that was really the rule?

24 A. I don't remember because my sisters had warned me about
25 what the consequences were.

1 MR. SCHWARTZ: Your Honor, I object to the hearsay.

2 THE COURT: Sustained.

3 BY MR. STILLEY:

4 Q. Were you allowed to have a watch?

5 A. I don't remember having one.

6 Q. Were you allowed to have contact with other individuals
7 and make friends?

8 A. No, I was not. I was not allowed to see or speak with
9 my sister almost the entire time I was there.

10 Q. And what was the reason that you were sent to Mountain
11 Park?

12 A. The influence of the Wills and the Gerhardts informing
13 my parents that I needed to be there.

14 Q. Do you know why your parents thought you were going to
15 be at Mountain Park?

16 MR. SCHWARTZ: Your Honor, I object, calls for
17 hearsay.

18 THE COURT: Sustained.

19 BY MR. STILLEY:

20 Q. Do you know if you were intended to be keeping your
21 sister company at Mountain Park?

22 MR. SCHWARTZ: Same objection.

23 THE COURT: Sustained.

24 Q. Did staff or orientation guides ever mock you or call
25 you hurtful names?

1 MR. SCHWARTZ: Objection, Your Honor, again, this is
2 not alleged in the case. It's not anything having to do with
3 my clients.

4 THE COURT: Sustained.

5 BY MR. STILLEY:

6 Q. While you were at Mountain Park did you gain weight?

7 A. Yes, I did.

8 Q. About how much?

9 A. About 30 pounds.

10 Q. Have you ever gained weight before or after Mountain
11 Park?

12 A. Not that significant of an amount.

13 Q. After you left Mountain Park what happened to the
14 weight that you gained?

15 A. I started losing it right away.

16 Q. And about how long did it take to get back to your
17 normal weight?

18 A. I probably -- I started losing it immediately.
19 Probably within a few months I had lost about ten pounds
20 maybe at least.

21 Q. Now, were you hungry while you were at Mountain Park?

22 A. Yes, I was.

23 Q. Before and after Mountain Park were you hungry in that
24 sort of fashion?

25 A. Not in that kind of way in which I could not have any

1 access to food.

2 Q. While you were at Mountain Park did you have hair loss?

3 A. Yes, I did.

4 Q. Can you tell the jury how --

5 MR. SCHWARTZ: Your Honor, I object to this. This
6 is not alleged. It's not part of the case.

7 MR. STILLEY: Your Honor.

8 MR. SCHWARTZ: How does it link up to any of the
9 claims in the case?

10 THE COURT: Sometimes, ladies and gentlemen of the
11 jury, you almost want to say talk to the hand, but I'm
12 bringing them over here and I'll talk to them. In the
13 meantime it's time for you all to go home. It's getting old.
14 We're going to start at nine tomorrow. Is that a problem for
15 anybody? Okay.

16 Now, you know, the admonition is don't discuss the
17 case until you're in the jury room. Let me break this down
18 for you right quick. When you go home your friends and
19 family are going to know you've been down here on jury
20 service, so the first question they will ask you is, "Did you
21 get selected to serve on a case?" The answer to that is
22 "Yes." Then the next question they will ask you is, "Well
23 what kind of case is it?" The answer to that is, "The judge
24 told me not to discuss that with you."

25 Because once you tell them, they are going to start

1 telling you, well, this happened, that happened. Admonition
2 gone. You can discuss this case as fully and freely with
3 anyone you choose when it's over, so hopefully by Thursday or
4 late Wednesday. So that's the way we are.

5 Anybody have a problem going till six tomorrow if we
6 need to? I'll try to break it up as we go to see where we
7 are. That will be the latest, nine to six. And we'll have a
8 break for this other matter in the morning and lunch and so
9 forth.

10 So have a pleasant evening. Recall the admonition
11 and the answer to give these people when they start
12 questioning you, okay. Have a pleasant evening.

13 (The following proceedings were held outside the
14 hearing of the jury:)

15 THE COURT: Mr. Schwartz, you say hair loss is not a
16 part of the case relative to Ms. Deboi?

17 MR. SCHWARTZ: Your Honor, I think that the only
18 thing it could possibly be relevant to, I'm assuming, would
19 be to the claim of surreptitious drugs being given, which
20 you've excluded from the case. I can't imagine what he is
21 claiming that my clients did wrong that would cause hair
22 loss.

23 THE COURT: Mr. Stilley.

24 MR. STILLEY: Your Honor, the defendant said they
25 stressed them too much, that's their theory, so hair loss.

1 THE COURT: Fine, okay. I'm letting it in. That's
2 that. Overruled. You can ask that tomorrow. Listen, let's
3 get this train moving.

4 MR. STILLEY: Sure, Judge.

5 THE COURT: I'll see you all tomorrow at nine.

6 (Court in recess at 4:33 p.m.)
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C E R T I F I C A T E

I, Susan R. Moran, Registered Merit Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 - 60 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this _____ day of _____, 2006.

/s/ Susan R. Moran
Registered Merit Reporter